

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:BRK:TL-N-3277-00

PARiegger

date: JUL 03 2000

to: Director, Brookhaven Customer Service Center
Attention: Analyst Ramon Martinez
Research and Analysis Branch
Stop 680

from: Acting District Counsel, Brooklyn District, New York

subject: [REDACTED]

Routine Service Center Advice

This is in response to your request for advice dated May 22, 2000. You wanted to know whether the Service erred when it denied the above taxpayer's application for quick refund of overpayment of withholding tax, and what remedies are available to the taxpayer. As set forth below, we believe that the taxpayer's application was properly denied.

Facts:

The facts as we understand them are as follows. The taxpayer is a corporation [REDACTED]

[REDACTED], it withholds income tax in the amount of 28% of the payment and remits to the taxpayer the payment less the amount of the withholding.

The taxpayer filed Form 4466, Corporation Application for Quick Refund of Overpayment of Estimated Tax. Records of the Service indicate that Form 4466 was received on [REDACTED]. By letter dated [REDACTED], the Service denied the taxpayer's application. The application was denied because a taxpayer cannot claim a refund of the withheld tax using Form 4466. The taxpayer was informed that the credit for withholding would be refundable when it filed its Form 1120, and that it would receive a credit for the tax withheld at that time.

Issues:

1. Whether quick refunds of tax withheld at the source may

be made to corporate taxpayers, in the same manner as estimated tax payments.

2. Whether there are any remedies available to the taxpayer.

Law:

General Refund Provisions:

In the case of any overpayment of tax, within the applicable period of limitation, the Service may credit the amount of the overpayment to any tax liability of the person and, subject to certain offsets required by statute, is required to refund to the taxpayer any balance remaining. I.R.C. § 6402(a).

Thus, determination that an overpayment exists must be made before a refund may be issued. An overpayment of tax includes the excess of withholding credits over the tax imposed. I.R.C. § 6401(b)(1). Therefore, before the Service can determine whether a taxpayer who is entitled to a withholding credit has overpaid its tax for any tax period, there must be a determination of the amount of the taxpayer's tax liability (tax imposed), as well as the amount of the withholding credit.

Refund of Estimated Tax Payments Prior to the Filing of Form 1120:

Corporate taxpayers who make estimated tax payments, may request an adjustment to their estimated tax payments and claim a refund of the excess prior to filing Form 1120. After the close of the taxable year, and on or before the 15th day of the third month thereafter, and before the taxpayer files an income tax return for the taxable year, the taxpayer may file an application for an adjustment of an overpayment by the taxpayer of estimated income tax for the taxable year. I.R.C. § 6425(a). An application filed under this section "shall not constitute a claim for credit or refund." Id.

The Service may "disallow, without further action, any application which [it] finds contains material omissions or errors. . . ." I.R.C. § 6425(b)(1). The Service's "action in disallowing, in whole or in part, any application for an adjustment of overpayment of estimated income tax shall be final and may not be challenged in any proceeding." Treas. Reg. § 1.6425-3(d). "The corporation in such a case, however, may file a claim for credit or refund under section 6402, and may maintain a suit based on such claim if it is disallowed or if the Service does not act upon the claim within six months from the

date it is filed." Id.

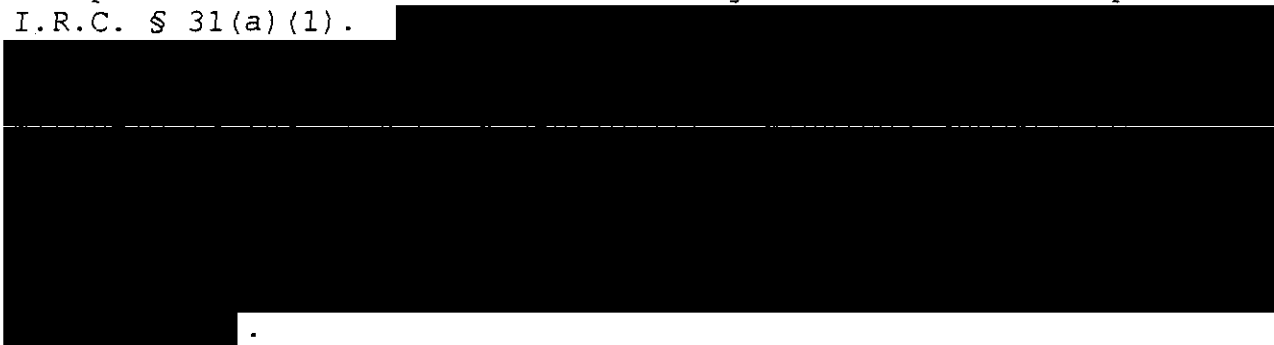
If the Service determines that an adjustment may be made, the Service may first credit any other outstanding tax liability and then issue the taxpayer a refund of the balance of the adjustment. I.R.C. § 6425(b)(2); Treas. Reg. § 1.6425-3(e). The adjustment is treated as an adjustment of the estimated tax paid, except for purposes of determining the estimated tax penalty under section 6655. I.R.C. § 6425(b)(4); Treas. Reg. § 1.6425-3(f).

An adjustment under this section is the excess of the estimated tax paid by the corporation over the amount that the corporation estimates, at the time of the filing of the application, as its income tax liability for the year in issue. I.R.C. § 6425(c)(2); Treas. Reg. § 1.6425-2(b).

Refundable Credits:

The Internal Revenue Code designates certain credits as refundable credits, that is, if the amount allowable as a credit under certain sections, including section 31, exceeds the tax imposed, the amount of the excess is an overpayment. I.R.C. § 6401(b)(1). Overpayments must be refunded to the taxpayer, after the required offsets are made. I.R.C. § 6402(a).

Any amount withheld as tax on "wages" is allowed to the recipient of the income as a credit against income tax imposed. I.R.C. § 31(a)(1).



The employer is liable for the payment of the tax withheld. I.R.C. § 3403. The employer can request an adjustment if more than the correct amount of the tax imposed by section 3402 has been paid. I.R.C. § 6413(a)(1). In addition, if more than the correct amount of the tax imposed by section 3402 has been paid and cannot be adjusted, the amount may be refunded. I.R.C. § 6413(b). Refunds are issued to the person who paid the tax (here, the employer). I.R.C. § 6402(a). If the employer has not filed his employment tax return, he can refund the overpayment to the employee prior to the end of the calendar year in which the

overpayment was made. Treas. Reg § 1.6413(a)-1(a)(2). There is no provision for an employee to request an adjustment of an overpayment by the employer. The remedy for the employee is to claim the refundable credit on his income tax return. I.R.C. § 31.

Discussion:

Issue 1:

In the case in issue, the taxpayer filed Form 4466, Corporation Application for Quick Refund of Overpayment of Estimated Tax. However, the taxpayer's application is not actually for a refund of overpaid estimated tax payments. Rather, it is for a refund of an overpayment of withheld taxes. Only the employer, New York State, who is responsible for the payment of the withholding tax, is entitled to request and obtain an overpayment of withholding. The taxpayer, who is the employee in this instance, is not entitled to claim a refund of withholding taxes paid. Section 6425 permits an adjustment to estimated tax payments prior to the filing of a corporate taxpayer's income tax return, and a refund of the amount adjusted (subject to offset to other tax liabilities). However, there is no comparable provision for the taxpayer responsible for the tax on the income received (the employee) to request an adjustment to the amount paid by the employer (a different taxpayer), and claim a refund of such prior to filing its corporate income tax return. However, that is what the taxpayer here is seeking to do.¹

The comparable provision for adjusting the amount of tax withheld at the source permits adjustments and refunds to the payer (the employer) of the tax. I.R.C. § 6413. Thus, while both sections 6425 and 6413 permit the payer of the tax to request an adjustment and a refund, section 6413 only permits a refund, if an adjustment cannot be made. Further, in the case of section 6425, the payer of the tax is the taxpayer responsible for the tax on the income received. In the case of section 6413, the payer of the tax is the employer who withholds remuneration at the source and is not the person responsible for the tax on the income received. The person responsible for the tax on the

¹ If the amount of tax withheld and paid by the employer, here New York State, is more than the amount of the employee's, here [REDACTED], tax liability, the only method provided by which the employee may claim a refund of such is to claim the withholding deducted from its income and paid by the employer as a refundable credit on its federal income tax return. I.R.C. §§ 31; 6401(b)(1); 6402.

income received, who is not the payer of the withholding tax, is only entitled to a credit (under section 31(a)(1)) "against the income tax imposed."

The taxpayer here filed Form 4466, which only applies to estimated tax payments, requesting a refund of withholding taxes. Apparently, the taxpayer believes that withholding credits should be treated in the same manner as estimated tax payments, despite the fact that the statute authorizing an adjustment to estimated tax payments makes no mention of authorizing an adjustment to withholding credits. The taxpayer has provided no basis for permitting an adjustment to itself based upon an overpayment of withholding credits, nor are we aware of any. The only basis for alleging that an adjustment is due is if more than 28% of the remuneration in issue was remitted. The taxpayer has not alleged this. Even if it had, the adjustment would have to be requested by the payer of the tax (New York State) and any refund to the taxpayer would then be from New York State. Further, we do not believe that there is a foundation for analogizing withholding credits to estimated tax payments with respect to the issue raised here.

Estimated tax payments are payments made by the taxpayer, based upon the taxpayer's estimate of the amount of tax that will be imposed. When the taxpayer believes that it has over-estimated the amount of estimated tax payments necessary, the Code provides a means for adjusting the amount of the payments, and refunding such to the taxpayer, based upon the taxpayer's estimate of its income tax liability.

Withholding taxes, which are credited against the tax imposed on the income from which the taxes were withheld, unlike estimated tax payments, are not paid by the taxpayer who is responsible for the taxes on the income. Rather, they are paid by the employer. I.R.C. § 3403. New York State is an employer. I.R.C. §§ 3402(q)(7); 6413(a)(5). Any adjustments or refunds arising out of overpayments of the tax are claimed by the employer. I.R.C. § 6413. The person who is responsible for the tax on the income from which the taxes were withheld is then entitled to a credit against the tax imposed. Treas. Reg. § 1.31-1. [REDACTED]

[REDACTED]. No statutory basis is provided for taxpayers to apply for an adjustment to this amount. Further, under section 31, the taxpayer receives credit for this amount against the tax imposed. There is no provision for applying this credit against estimated tax imposed.

Here, the Service disallowed the application because a

taxpayer cannot claim a refund of the withheld tax using Form 4466. The use of Form 4466 is only authorized to apply for an adjustment to estimated tax payments. The taxpayer did not use the form for such. Therefore, the taxpayer's application contained a material error and the disallowance was not in error. Further, in cases in which adjustments are requested, taxes withheld at the source are treated differently than estimated tax payments under the Internal Revenue Code and cannot be equated to estimated tax payments on Form 4466.²

Issue 2.:

The Service's disallowance is final and may not be challenged in any proceeding. Treas. Reg. § 1.6425-3(d). The only remedy available to the taxpayer is to file a claim for refund. Id. While we understand that this is not what the taxpayer wishes to do because he wants a refund prior to filing his income tax return, it is the only remedy provided.

If you have any questions, please call Patricia Riegger at (516) 688-1702.

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Acting District Counsel

By: 
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Attorney

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² We note that for some purposes they are treated similarly. We have not discussed these similarities because they are not relevant here.